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5 Attorneys for Defendant  
6 NATIONAL TOBACCO COMPANY, LP

7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN FRANCISCO DIVISION  
11

12 RAYMOND RILEY p.k.a. Boots Riley,  
13 SOLOMON DAVID and MARLON IRVING  
p.k.a. Lifesavas,

14 Plaintiffs,

15 v.

16 NATIONAL TOBACCO COMPANY LP,

17 Defendant.  
18  
19  
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22  
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27  
28

Case No. C-08-01931 JSW

**DECLARATION OF BRUCE H.  
JACKSON IN SUPPORT OF  
ADMINISTRATIVE MOTION BY  
DEFENDANT NATIONAL TOBACCO  
COMPANY TO CONSIDER  
WHETHER CASES SHOULD BE  
RELATED**

**[Local Rule 3-12(b)]**

**Before: The Honorable Jeffrey S. White**

**[FILED VIA E-FILING]**

1 I, Bruce H. Jackson, declare as follows:

2 1. I am a partner at the law firm of Baker & McKenzie LLP in San Francisco, California  
3 and I am admitted to practice before this Court. I am counsel for Defendant National Tobacco  
4 Company LP in Raymond Riley, et al. v. National Tobacco Company LP, United States District  
5 Court for the Northern District of California, Case No. C-08-1931 JSW. I submit this Declaration in  
6 support of Defendant National Tobacco Company's ("NTC") Administrative Motion to Consider  
7 Whether Cases Should be Related.

8 2. On April 11, 2008, Plaintiffs Raymond Riley, Solomon David and Marlon Irving  
9 filed their complaint in this action, whereby they brought the following claims against NTC:  
10 trademark violations under 15 U.S.C. § 1125, misappropriation claims under Cal. Civ. Code § 3344,  
11 and unfair competition claims under Cal. Bus. and Prof. Code § 17200. The Riley complaint is the  
12 earliest-filed action in this Court. Attached hereto as **Exhibit A** is a true and correct copy of the  
13 Riley complaint.

14 3. On the same day, April 11, 2008, Plaintiffs Timothy Parker and Xavier Mosley filed a  
15 complaint in this court, captioned Timothy Parker and Xavier Mosley v. National Tobacco Company  
16 LP, United States District Court for the Northern District of California, Case No. C 08-01933 WHA,  
17 whereby they brought the same trademark, misappropriation and unfair competition claims brought  
18 by the Riley plaintiffs against NTC. Attached hereto as **Exhibit B** is a true and correct copy of the  
19 Parker complaint.

20 4. Defendant NTC has filed motions to dismiss, stay or transfer both actions on the  
21 grounds of a first-filed action in the Southern District of New York.

22  
23 I declare under penalty of perjury under the laws of the United States of America that the  
24 foregoing is true and correct and that this declaration was executed on May 2, 2008 at San Francisco,  
25 California.

26  
27 /s/ Bruce H. Jackson  
BRUCE H. JACKSON

# EXHIBIT A

E-filing

ANTHONY E. MCNAMER CSB #178911

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Attorneys for Plaintiffs

FILED

APR 11 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

For  
POC

ISS.  
C3

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ADR

RAYMOND RILEY p.k.a. Boots Riley,  
SOLOMON DAVID and MARLON IRVING  
p.k.a. Lifesavas

PLAINTIFFS,

v.

NATIONAL TOBACCO COMPANY, LP  
DEFENDANT.

Case No.

C08-01931

COMPLAINT FOR:

- 1) FALSE DESIGNATION OF ORIGIN  
(15 U.S.C. § 1125)
- 2) MISAPPROPRIATION OF RIGHT  
OF PUBLICITY (California Common  
Law and Cal. Civ. Code §3344)
- 3) UNFAIR COMPETITION (Cal. Bus.  
and Prof. Code §17200 *et. seq.*)

EMC

DEMAND FOR JURY TRIAL

1  
[Signature]

For their complaint against Defendant, Plaintiffs allege as follows:

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 15 U.S.C § 1121 because it arises under the unfair competition laws of the United States. The Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the

Page 1 - PLAINTIFFS' COMPLAINT

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EXHIBIT

A

NOTICE OF ASSIGNMENT  
TO MAGISTRATE JUDGE SENT

amount in controversy exceeds \$75,000.

2. This Court has personal jurisdiction over the defendants, and venue of this action is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because this action arises from the transaction of business in California or, alternatively, out of a tortious act committed in California or with expected consequences within this state.

## II.

### THE PARTIES

3. Plaintiff Raymond Riley is a resident of Alameda County, California and is professionally known as Boots Riley.

4. Plaintiff Solomon David is a resident of Alameda County, California and Plaintiff Marlon Irving is a resident of Portland, Oregon, and they are professionally known as the musical group Lifesavas

5. Defendant National Tobacco Company, LP ("National Tobacco") is a Delaware limited partnership doing business at all times within the Alameda County in the State of California.

## III.

### FACTUAL ALLEGATIONS

6. Boots Riley is a musical artist and a co-founder of the musical group The Coup. Boots Riley was raised amidst political action in Oakland, California, where, since the age of fifteen, he's been involved in organizing and inspiring youth. From student organizing in Oakland's public schools, to serving on the central committee for the Progressive Labor Party, to holding the presidential position for InCAR (International Committee Against Racism), and organizing to build California's Anti-Racist Farm Workers' Union, Boots Riley has been an

integral part of a progressive struggle for positive change through culture and has used his music as a medium to promote that change. Boots Riley's music and image presents a decidedly anti-corporate message.

7. Lifesavas are part of the positive hiphop movement. They are a musical group who have built their career addressing such issues as politics, family, social justice, drug abuse, religion and racial progress. Their music is conscientious and their image has always been about motivating kids and adults to stay drug and alcohol free. Their music also encourages their fans to be aware of the problems associated with such abuses.

8. National Tobacco is a large tobacco company. Through a license, they are the exclusive United States (and Canada) distributor of Zig-Zag brand rolling papers.

9. Beginning in April 2006, National Tobacco began an enormous national and international marketing campaign centered on the website ZigZagLive.com (the "Website"). As part of this marketing campaign they also sponsored a national music tour entitled Zig-Zag Live Club Tour (the "Tour"), which began in 2006 and continues to this day. On information and belief, National Tobacco paid musical artists to sponsor and promote their products. National Tobacco entered into agreements with sponsored artists granting National Tobacco specific rights to use sponsored artists' names, likenesses, and biographies on the Website. These sponsored and endorsing artists were featured prominently on the Website, and the Tour also featured these sponsored artists along with other non-sponsored artists.

10. On information and belief National Tobacco spent millions of dollars on this ZigZagLive.com marketing campaign and continues to use the Website to promote its products. Indeed, the ZigZag.com website contains almost no content. The Website, however, contains substantial content and accounts for nearly all of Zig-Zag's web presence and branding.

11. On the Website, the “sponsored” artists are identified by National Tobacco as “ZIG-ZAG ARTISTS”. Plaintiffs were never sponsored by National Tobacco and never agreed to endorse National Tobacco’s products or to become “ZIG-ZAG ARTISTS”.

12. National Tobacco’s products effectively represent a corporate ideology that puts profits above the public’s health and well-being. Plaintiffs have never endorsed tobacco products, and would never endorse tobacco products.

13. On or about October 17, 2007, National Tobacco began using Boots Riley’s names, photograph and biography to promote Zig-Zag brand products on the Website. National Tobacco continued to use Boots Riley’s name, photograph and biography to promote its products through April 4, 2008. A true and correct copy of the unauthorized Boots Riley promotional materials used by National Tobacco on the Website, which false identifies Boots Riley as a “ZIG-ZAG ARTIST”, is attached hereto as Exhibit A.

14. On or about October 25, 2007, National Tobacco began using Lifesavas’ name, photograph and biographies to promote Zig-Zag brand products on the Website. National Tobacco continued to use Lifesavas’ name, photograph and biographies to promote its products through April 4, 2008. A true and correct copy of the unauthorized Lifesavas promotional materials used by National Tobacco on the Website, which falsely identify Lifesavas as a “ZIG-ZAG ARTIST”, is attached hereto as Exhibit B.

15. Given the message Plaintiffs have spread throughout their careers, the use of Plaintiffs’ names, photographs and biographies to promote Big Tobacco’s products and agenda is particularly damaging. Plaintiffs would never license use of their names, photographs and biographies to promote tobacco products. Lifesavas, for example, share the same view as the National Association of African-Americans for Positive Imagery, who has shown that the



African-American community has been exploited by tobacco companies. Indeed, significant research confirms that tobacco companies have specifically targeted the African-American community.

16. Such apparent affiliation with, and sponsorship of, National Tobacco and its products has severely damaged Plaintiffs' reputation, as their fans now perceive Plaintiffs to be profiting from the sale of tobacco products.

17. On information and belief, National Tobacco paid their sponsored musicians up to \$5,000 per sponsored show during such sponsored artists' endorsement of National Tobacco's products and promotion on the Website.

18. During the period of National Tobacco's illegal use of Plaintiffs' names, photographs and biographies, Boots Riley performed 50 shows and Lifesavas performed 27 shows. Thus, had Boots Riley entered into a sponsorship agreement with National Tobacco covering the term of National Tobacco's unauthorized use of Boots Riley's right of publicity, National Tobacco would have paid approximately \$250,000. Had Lifesavas entered into a sponsorship agreement with National Tobacco covering the term of National Tobacco's unauthorized use of Lifesavas's right of publicity, National Tobacco would have paid approximately \$135,000.

### **FIRST CAUSE OF ACTION**

#### **False Designation of Origin (15 U.S.C. § 1125 *et seq.*)**

19. Plaintiffs repeat and incorporate by this reference each and every allegation set forth in paragraphs 1 through 18, inclusive.

20. National Tobacco's use of Plaintiffs' names, photograph and biographies constitutes a false designation of origin or description in that it is likely to cause confusion, or to



cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiffs' with National Tobacco, and Plaintiffs' sponsorship or approval of National Tobacco's goods and commercial activities. Thus, National Tobacco's activities constitute violations of 15 U.S.C. § 1125(a).

21. National Tobacco's acts of unfair competition are willful and deliberate and are made with the intent to reap the benefit of Plaintiffs' names, celebrity, goodwill and reputations.

22. By reason of National Tobacco's acts of false designation, description and representation as alleged above, Plaintiffs have suffered, and will continue to suffer, lost revenue and substantial damage to their reputation and goodwill.

23. Additionally, National Tobacco has unfairly profited from the acts of false designation, description and representation as alleged above, in an amount to be determined at trial.

### **SECOND CAUSE OF ACTION**

Misappropriation of the Right of Publicity (Common Law and Cal. Civ. Pro. § 3344)

24. Plaintiffs repeat and incorporate by this reference each and every allegation set forth in paragraphs 1 through 23, inclusive.

25. Plaintiffs have an exclusive right of publicity in the use of their names, photographs and biographies.

26. National Tobacco misappropriated the rights of publicity owned and controlled by Plaintiffs by displaying Plaintiffs' names, photographs and biographies for National Tobacco's commercial gain without authorization.

27. As a direct and proximate result of National Tobacco's conduct as aforesaid, Plaintiffs have been damaged by lost income in an amount to be determined at trial, but in no

event less than \$250,000 for Boots Riley and \$135,000 for Lifesavas.

28. National Tobacco acted deliberately to injure Plaintiffs and otherwise in conscious disregard of Plaintiffs' rights. Further, National Tobacco performed these acts, or otherwise authorized, ratified or had knowledge of them, and thereby acted in conscious disregard of Plaintiffs' rights.

29. National Tobacco's conduct as alleged above has damaged and will continue to damage Plaintiffs' goodwill and reputation and has resulted in losses to Plaintiffs and illicit gain of profit to National Tobacco in an amount to be determined at trial.

30. The acts and conduct of National Tobacco as alleged above in this Complaint constitute a misappropriation of the right of publicity pursuant to the common law of California.

31. The acts and conduct of National Tobacco as alleged above in this Complaint constitute a misappropriation of the right of publicity in the form of the unauthorized commercial use of Plaintiffs' name and photograph in violation of California Civil Code §3344.

32. The aforementioned acts of National Tobacco were willful, oppressive, fraudulent and malicious and therefore, National Tobacco's conduct justifies an award of exemplary or punitive damages in an amount sufficient to punish National Tobacco and to make examples of them to others as provided for in Cal. Civ. Code § 3344(a).

### **THIRD CAUSE OF ACTION**

Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*)

33. Plaintiffs repeat and incorporate by this reference each and every allegation set forth in paragraphs 1 through 32, inclusive.

34. The acts and conduct of National Tobacco as alleged above in this Complaint constitute unlawful, unfair, and/or fraudulent business acts or practice as defined by California

Bus. & Prof. Code § 17200 *et seq.*

35. National Tobacco's violation of federal law (15 U.S.C. § 1125), state law (Cal. Civ. Code § 3344) and common law, as alleged above in this Complaint, constitute unlawful business practices.

36. National Tobacco acts of unfair competition have proximately caused and will continue to cause Plaintiffs to suffer injury in fact and loss of money in an amount to be determined at trial.

37. National Tobacco's acts of unfair competition have also caused and are causing irreparable and incalculable injury to Plaintiffs' reputation and goodwill.

**PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing, Plaintiffs make a DEMAND FOR JURY TRIAL and demands judgment in their favor against Defendant as follows:

- (i) Plaintiffs' general, special and actual damages in a sum to be determined at trial but in no event less than: \$250,000 to Boots Riley and \$135,000 to Lifesavas;
- (ii) Defendant's profits pursuant to 15 U.S.C. § 1117, Cal. Civ. Code § 3344 and Cal. Bus. & Prof. Code § 17200 *et seq.* and alternatively for statutory damages pursuant to Cal. Civ. Code § 3344;
- (iii) Judgment for punitive damages in a sum to be determined at trial;
- (iv) An award to Plaintiffs of their attorneys' fees and costs of suit pursuant to 15 U.S.C. § 1117 and Cal. Civil Code § 3344(a); and

(v) Such other and further relief as the Court deems just and proper.

DATED: April 11, 2008

**MCNAMER AND COMPANY, PC**

By 

**Anthony E. McNamer, CSB #178911**

**MCNAMER AND COMPANY, PC**

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Portland, Oregon 97204

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Attorneys for Plaintiffs

Zig Zag Tour Live ~ Artists - Windows Internet Explorer

File Edit View Favorites Tools Help

Google <http://www.zigzaglive.com/live/?cat=6#933>

Go + [Go](#) [Windows](#) [Windows Marketplace](#) [Windows Media](#)

Customize Links [Free Hotmail](#) [Windows](#) [Zig Zag Tour Live ~ Artists](#)

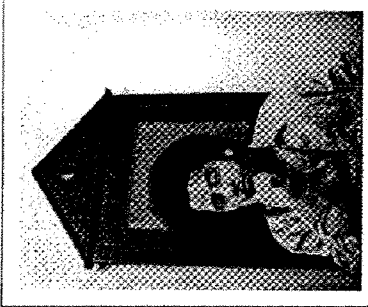
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## Boots Riley

October 17th, 2007

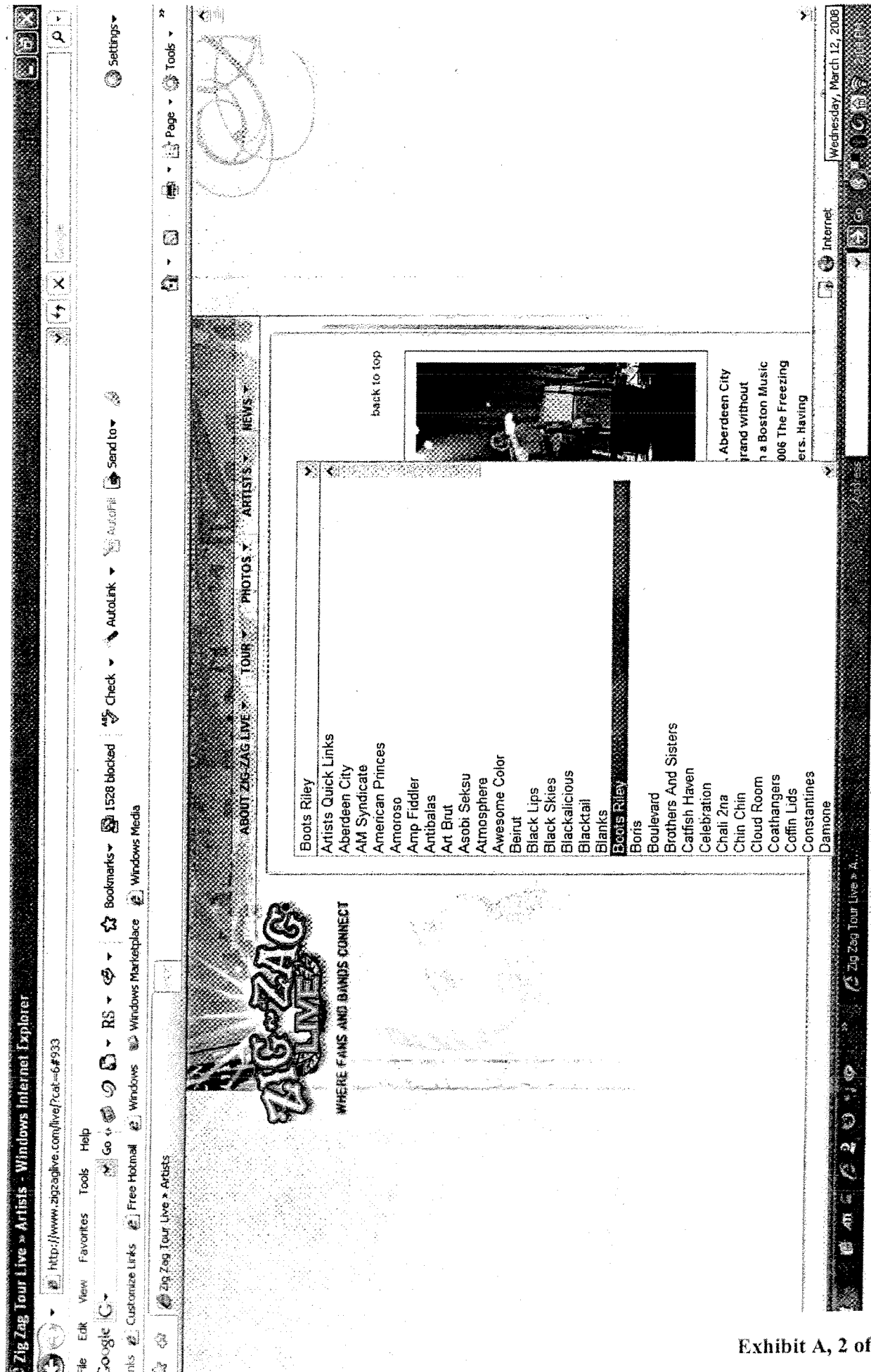
Boots Riley is a co-founding member, producer, songwriter, and arranger of the revolutionary hip-hop group the Coup, but Riley's penchant for activism and rebellious tactics go back to his teenage years. After organizing activist groups in his high school, Riley served on the central committee for the Progressive Labor Party, held the presidential seat on the International Committee Against Racism, and helped to organize the Anti-Racist Farm Workers' Union in California. In 1991, along with a group of fellow artists and political activists, Riley formed the Man Mau Rhythm Collective, which held local hip-hop concerts to help promote awareness for the causes of civil liberties organizations such as the Women's Economic Agenda Project and various other anti-police brutality campaigns. As a result of these performances, the Coup was formed later that year, releasing their first album *Kill My Landlord* in 1993. *Genocide and Juice* followed in 1994, after which their label folded, and Riley went into retirement from music. He returned music with the Coup in 1998, releasing *Seal This Album* that year and *Party Music* in 2001, which was rated "best rap album of the year" by several publications including *Rolling Stone*. *Pick a Bigger Weapon* came in 2006, freshly combining the outrage of Public Enemy with the grooves of the live musicianship found on classic Prince or Parliament/Funkadelic records. Having made a guest appearance on

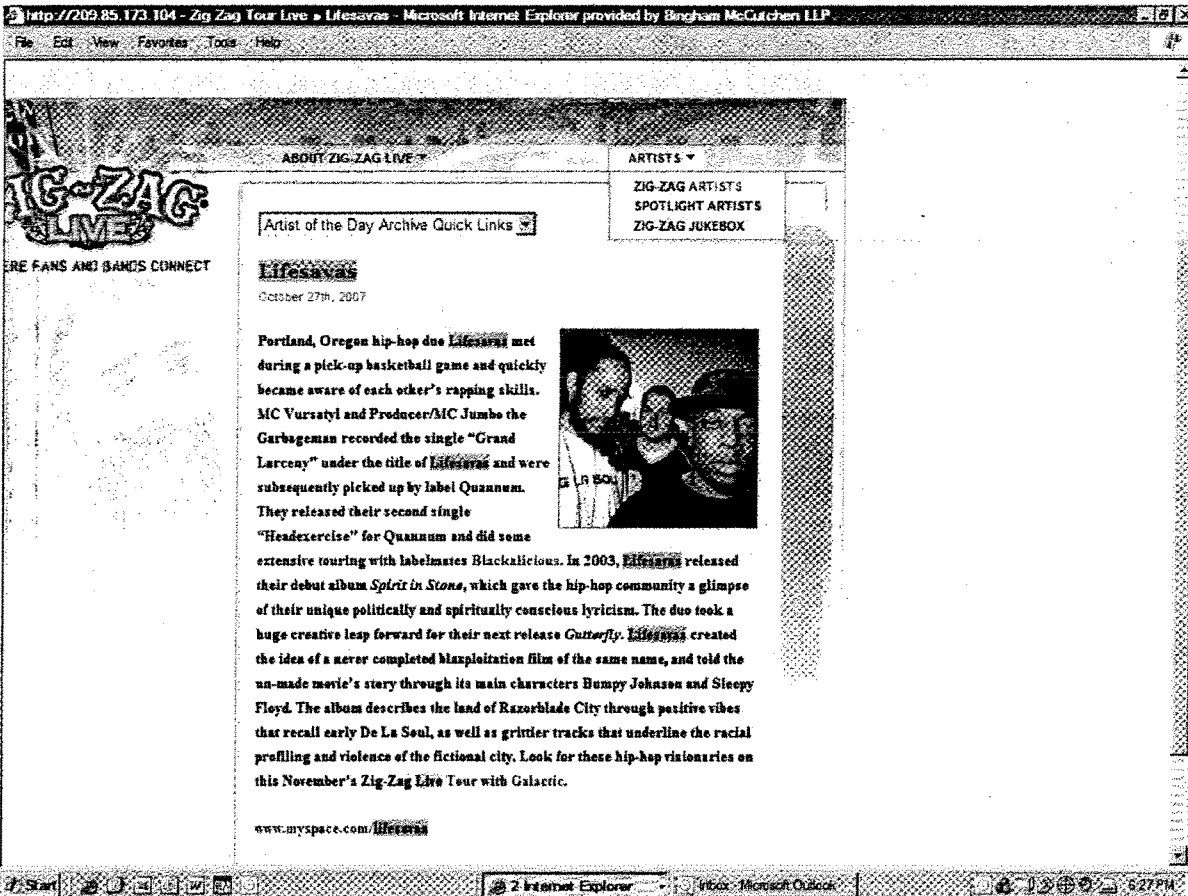


Internet Wednesday, March 12, 2008

Zig Zag Tour Live ~ Artists









# **EXHIBIT B**

ANTHONY E. MCNAMER CSB #178911  
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Attorneys for Plaintiffs

E-filing

FILED

APR 11 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

Free  
paid  
J.S.  
(3)

ADR

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TIMOTHY PARKER and XAVIER  
MOSLEY p.k.a. Blackalicious

PLAINTIFFS,

v.

NATIONAL TOBACCO COMPANY, LP  
DEFENDANT.

Case No.

08-01933 WHA

COMPLAINT FOR:

- 1) FALSE DESIGNATION OF ORIGIN  
(15 U.S.C. § 1125)
- 2) MISAPPROPRIATION OF RIGHT  
OF PUBLICITY (California Common  
Law and Cal. Civ. Code §3344)
- 3) UNFAIR COMPETITION (Cal. Bus.  
and Prof. Code §17200 *et. seq.*)

DEMAND FOR JURY TRIAL

For their complaint against Defendant, Plaintiffs allege as follows:

I.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this action pursuant to 15 U.S.C § 1121 because it arises under the unfair competition laws of the United States. The Court also has jurisdiction pursuant to 28 U.S.C. § 1332 because there is complete diversity between the parties and the

Page 1 -- PLAINTIFFS' COMPLAINT

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EXHIBIT

B

for

amount in controversy exceeds \$75,000.

2. This Court has personal jurisdiction over the defendants, and venue of this action is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) because this action arises from the transaction of business in California or, alternatively, out of a tortious act committed in California or with expected consequences within this state.

## II.

### THE PARTIES

3. Plaintiffs Timothy Parker and Xavier Mosely reside in Alameda County, California and are professionally known as the musical group Blackalicious.

4. Defendant National Tobacco Company, LP ("National Tobacco") is a Delaware limited partnership doing business at all times within the Alameda County in the State of California.

## III.

### FACTUAL ALLEGATIONS

5. Blackalicious is a seminal indie hip hop group. Blackalicious has always been at the forefront of the "positive" rap movement. Their lyrics are often spiritual, introspective and uplifting rather than violent or misogynistic.

6. National Tobacco is a large tobacco company. Through a license, they are the exclusive United States (and Canada) distributor of Zig-Zag brand rolling papers.

7. Beginning in April 2006, National Tobacco began an enormous national and international marketing campaign centered on the website ZigZagLive.com (the "Website"). As part of this marketing campaign they also sponsored a national music tour entitled Zig-Zag Live Club Tour (the "Tour"), which began in 2006 and continues to this day. On information and

belief National Tobacco paid musical artists to sponsor and promote their products. National Tobacco entered into agreements with sponsored artists granting National Tobacco specific rights to use sponsored artists' names, likenesses, and biographies on the Website. These sponsored and endorsing artists were featured prominently on the Website, and the Tour also featured these sponsored artists along with many other non-sponsored artists. Blackalicious never played a single date on the Tour, either as a sponsored artist or on a bill with a sponsored artist.

8. On information and belief National Tobacco spent millions of dollars on this ZigZagLive.com marketing campaign and continues to use the Website to promote its products. Indeed, the ZigZag.com website contains almost no content. The Website, however, contains substantial content and accounts for nearly all of Zig-Zag's web presence.

9. On the Website, the "sponsored" artists are identified by National Tobacco as "ZIG-ZAG ARTISTS". Plaintiffs were never sponsored by National Tobacco and never agreed to endorse National Tobacco's products or to become "ZIG-ZAG ARTISTS".

10. On or about June 12, 2006 National Tobacco began using Blackalicious's name, photograph and biography to promote Zig-Zag brand products on the Website. National Tobacco continued to use Blackalicious's name, photograph and biographies to promote its products through April 4, 2008. A true and correct copy of the unauthorized Blackalicious promotional materials used by National Tobacco on the Website, which falsely identifies Blackalicious as a "ZIG-ZAG ARTIST", is attached hereto as Exhibit A.

11. On information and belief National Tobacco paid their sponsored musicians up to \$5000 per sponsored show during such sponsored artists' endorsement of National Tobacco's products and promotion on the Website.

12. During the period of National Tobacco's illegal use of Plaintiffs' names,

photographs and biographies, Blackalicious performed 57 shows. Thus, had Blacklicious entered into a sponsorship agreement with National Tobacco covering the term of National Tobacco's unauthorized use of Blacklicious's right of publicity, National Tobacco would have paid approximately \$285,000.

### **FIRST CAUSE OF ACTION**

#### **False Designation of Origin (15 U.S.C. § 1125 *et seq.*)**

13. Plaintiffs repeat and incorporate by this reference each and every allegation set forth in paragraphs 1 through 12, inclusive.

14. National Tobacco's use of Plaintiffs' names, photograph and biographies constitutes a false designation of origin or description in that it is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of Plaintiffs' with National Tobacco and Plaintiffs' sponsorship, or approval of National Tobacco's goods and commercial activities. Thus, National Tobacco's activities constitute violations of 15 U.S.C. § 1125(a).

15. National Tobacco's acts of unfair competition are willful and deliberate and are made with the intent to reap the benefit of Plaintiffs' names, celebrity, goodwill and reputations.

16. By reason of National Tobacco's acts of false designation, description and representation as alleged above, Plaintiffs have suffered, and will continue to suffer, lost revenue and substantial damage to their reputation and goodwill.

17. Additionally, National Tobacco has unfairly profited from the acts of false designation, description and representation as alleged above, in an amount to be determined at trial.

**SECOND CAUSE OF ACTION**

Misappropriation of the Right of Publicity (Common Law and Cal. Civ. Pro. § 3344)

18. Plaintiffs repeat and incorporate by this reference each and every allegation set forth in paragraphs 1 through 17, inclusive.

19. Plaintiffs have an exclusive right of publicity in the use of their names, photographs and biographies.

20. National Tobacco misappropriated the rights of publicity owned and controlled by Plaintiffs by displaying Plaintiffs' names, photographs and biographies for National Tobacco's commercial gain without authorization.

21. As a direct and proximate result of National Tobacco's conduct as aforesaid, Plaintiffs have been damaged by lost income in an amount to be determined at trial, but in no event less than \$285,000.

22. National Tobacco acted deliberately to injure Plaintiffs and otherwise in conscious disregard of Plaintiffs' rights. Further, National Tobacco performed these acts, or otherwise authorized, ratified or had knowledge of them, and thereby acted in conscious disregard of Plaintiffs' rights.

23. National Tobacco's conduct as alleged above has damaged and will continue to damage Plaintiffs' goodwill and reputation and has resulted in losses to Plaintiffs and illicit gain of profit to National Tobacco in an amount to be determined at trial.

24. The acts and conduct of National Tobacco as alleged above in this Complaint constitute a misappropriation of the right of publicity pursuant to the common law of California.

25. The acts and conduct of National Tobacco as alleged above in this Complaint constitute a misappropriation of the right of publicity in the form of the unauthorized commercial

use of Plaintiffs' name and photograph in violation of California Civil Code §3344.

26. The aforementioned acts of National Tobacco were willful, oppressive, fraudulent and malicious and therefore, National Tobacco's conduct justifies an award of exemplary or punitive damages in an amount sufficient to punish National Tobacco and to make examples of them to others as provided for in Cal. Civ. Code § 3344(a).

### **THIRD CAUSE OF ACTION**

Unfair Competition (Cal. Bus. & Prof. Code § 17200 *et seq.*)

27. Plaintiffs repeat and incorporate by this reference each and every allegation set forth in paragraphs 1 through 26, inclusive.

28. The acts and conduct of National Tobacco as alleged above in this Complaint constitute unlawful, unfair, and/or fraudulent business acts or practice as defined by California Bus. & Prof. Code § 17200 *et seq.*

29. National Tobacco's violation of federal law (15 U.S.C. § 1125), state law (Cal. Civ. Code § 3344) and common law, as alleged above in this Complaint, constitute unlawful business practices.

30. National Tobacco acts of unfair competition have proximately caused and will continue to cause Plaintiffs to suffer injury in fact and loss of money in an amount to be determined at trial.

31. National Tobacco's acts of unfair competition also have caused and are causing irreparable and incalculable injury to Plaintiffs' reputation and goodwill.

### **PRAYER FOR RELIEF**

WHEREFORE, based on the foregoing, Plaintiffs make a DEMAND FOR JURY TRIAL and demands judgment in their favor against Defendant as follows:



(i) Plaintiffs' general, special and actual damages in a sum to be determined at trial but in no event less than \$285,000;

(ii) Defendant's profits pursuant to 15 U.S.C. § 1125, Cal. Civ. Code § 3344 and Cal. Bus. & Prof. Code § 17200 *et seq.* and alternatively for statutory damages pursuant to Cal. Civ. Code § 3344;

(iii) Judgment for punitive damages in a sum to be determined at trial;

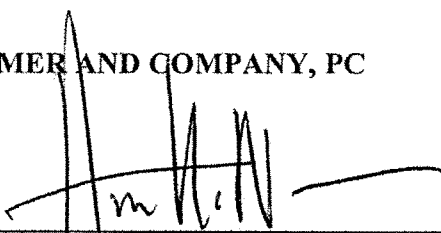
(iv) An award to Plaintiffs of their attorneys' fees and costs of suit pursuant to Cal. Civil Code § 3344(a); and

(v) Such other and further relief as the Court deems just and proper.

DATED: April 11, 2008

MCNAMER AND COMPANY, PC

By

  
\_\_\_\_\_  
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Attorneys for Plaintiffs

